BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

TALIS ABOLINS AND MARLA STEINHOFF,

Petitioners,

v.

CITY OF SEATTLE,

Respondent.

CASE No. 14-3-0009

ORDER ON MOTIONS

This matter came before the Board upon various motions by the parties. The City of Seattle's Motion to Dismiss (MTD) was filed November 6, 2014, Petitioners responded November 20, 2014, and the City replied November 26, 2014. Petitioners' Motion to Enlarge Time for Motion to Supplement was received on November 13, 2014. On November 17, 2014, Petitioners' Motion to Supplement (MTS) was received and the City responded November 19, 2014.

MOTION TO EXTEND DEADLINE FOR MOTION TO SUPPLEMENT

Petitioners seek a 5 day extension in order to respond to the delay in receipt of, and volume of, documents responsive to their public records request. Respondent City of Seattle has not objected. Petitioners' motion is **granted.**

MOTION TO DISMISS

Respondent City of Seattle submits a Motion to Dismiss all or part of most of the issues set forth in the Petition for Review[1] (PFR).[2] The City's objections fall in three general categories:

[1] Second Amended PFR (October 10, 2014).
[2] Respondent's MTD (November 6, 2014) at 1, 12-13.

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1. The City argues that some of Petitioners' issues do not pertain to the challenged action.[3]
2. The City challenges Petitioners' standing to bring some issues.[4]
3. The City asserts that Petitioners' issues allege violations of inapplicable GMA requirements and inapplicable Comprehensive Plan provisions (such as budgeting, acquisition, and critical areas policies).[5]

WAC 242-03-555(1) states:

> (1) Dispositive motions on a limited record to determine the board's jurisdiction, the standing of a petitioner, or the timeliness of the petition *are permitted*. The board *rarely entertains a motion for summary judgment* except in a case of failure to act by a statutory deadline. (emphasis added)

Practice before the Growth Management Hearings Board (GMHB) differs in several respects significant to motions practice. First, the respondent before the Board merely enters a notice of appearance, rather than a responsive pleading as before a court. While the right to raise issues of jurisdiction or affirmative defenses is waived if not raised in a responsive pleading before other courts, jurisdiction and other defenses may be raised before the GMHB in prehearing briefs.[6] Second, the GMHB is required by statute to render its decision within 180 days from the time a PFR is filed.[7] Third, the GMHB frequently exercises the discretion granted it under WAC 242-03-555(3) to defer consideration of a dispositive motion until the hearing on the merits.[8] "Taking into consideration the complexity and finality of the issues raised," the Board may decline to rule on a motion to dismiss without a full record and benefit of oral argument.

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[3] Respondent's MTD at 2.
[4] Respondent's MTD at 3.
[5] Respondent's MTD at 5.
[6] *Wash. R. App. P. 2.5(a)(1)*; *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, 135 Wn.2d 542, 556, 958 P.2d 962 (1998)* (challenge to an administrative adjudicator's subject matter jurisdiction may be raised at any time in the course of review proceedings in court). WAC 242-03-590; See e.g., *Futurewise v. Spokane County,* Case No. 10-1-0006, Final Decision and Order (August 17, 2010), at 5-9 (challenge to petitioner's standing raised by County in prehearing briefs and argued at hearing on the merits).
[7] RCW 36.70A.290(2)(a).
[8] See e.g., *Corning, et al. v. Douglas County,* Case No. 13-1-0001, Final Decision and Order (August 26, 2013); *Dragonslayer, et al. v. City of La Center*, Case No. 14-2-0003c (April 28, 2014).

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Taken together, these differences bear on whether some types of motions promote or hinder the efficient resolution of a case. Where a dispositive motion, if granted, is likely to completely resolve a case or at least *significantly* narrow the issues for review, such a motion is often beneficial. In contrast, there are many cases where deciding an argument on a limited record is difficult or where, even if the Board grants a dispositive motion, portions of many issues will still remain to be decided at the hearing on the merits. In these latter instances, dispositive motions are likely to result in the *inefficiency* inherent in considering the case twice – once on motion on a limited record and again in the case in chief. The instant case falls largely into the latter category.

1. Do Petitioners raise challenges to actions other than Ordinance 124513? (Issues 4, 7, and 9)

Respondent correctly asserts that the Board's jurisdiction is limited to determining whether the challenged action complies with GMA.[9] Respondent then reads Issues 4, 7, and 9 to allege that documents other than Ordinance 124513 violate the GMA. Petitioners counter that the City violated an obligation to ensure that its capital facilities plans were concurrently updated with the rezone.[10]

The Board acknowledges that the issue statements may be inartfully worded, but the City is not free to read the numbered statements in isolation from the introductory paragraph listing the statutes alleged to have been violated. Read together, Petitioners are asserting a violation of the requirement of RCW 36.70A.120 that the City must perform its activities and make capital budget decisions in conformity with its comprehensive plan policies.

To prevail, Petitioners must yet show that the Ordinance is noncompliant with actual requirements contained in the City's Comprehensive Plan and clearly erroneous in light of GMA planning goals.

The City's motion to dismiss issues pertaining to the Capital Funding and the Capital Improvement Plan is **denied.**

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[9] Respondent's MTD at 2.
[10] Petitioners' Response to MTD (November 20, 2014) at 3.

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2. Do Petitioners lack standing to raise issues regarding protection of existing public facilities? (pertaining to portions of Issues 3, 6, 10, and 11)

It is undisputed that Petitioners participated extensively, both orally and in writing, in what the City concedes was a 15-year process[11] leading up to the challenged action. RCW 36.70A.280(2) provides: "A petition may be filed only by . . . (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested . . . ."

The City asserts that Petitioners' participation was limited to a desire for new parks and open space[12] and attaches, *inter alia*, a portion of an email from Mr. Abolins to City Planners expressing concern about increasing density without "formulas for funding or public benefits of needed open space" and the need for "equality in open space, employment, transportation, and the infrastructure . . . needed to make these neighborhoods safe and livable."[13] The Board reads Petitioners' statement as sufficient to put the City on notice of their concerns about a broad range of density-related issues. Petitioners contend that all the issues presented for review are reasonably related to concerns that Petitioners articulated during the public process and the Board agrees.[14] To read Petitioners' advocacy of a balance between density, infrastructure, and open space as limited to advocating for new open space assumes the City could only achieve that balance by acquiring open space, yet the option of, for example, addressing the density side of the equation is also available.

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[11] City's Response to Petitioners' MTS (November 19, 2014) at 2.
[12] Respondent's MTD at 3-4.
[13] Exhibit 020 at 1-3.
[14] See e.g., *Confederated Tribes and Bands of the Yakama Nation v. Yakima County,* Case No. 10-1-0011, Final Decision and Order (April 4, 2011), at 7-8, finding participation standing: "[I]t cannot be said the County or Ecology were "blind-sided" by the Yakama Nation's appeal or by the fact the SMA requires SMPs to be consistent with and implement the goals, policies, and requirements of the SMA;" *Janet Wold, et al. v. City of Poulsbo*, Case No. 10-3-0005c, Order on Dispositive Motions (May 11, 2010), at 19, denying motion to dismiss legal issue for lack of standing: "Testimony in a public process does not need to spell out all of the Petitioners' legal theories, only apprise the City Council of the subject matter of the concern. The City was aware that Petitioners objected to the density standards on which the City was basing its plan. Petitioners are entitled to spell out additional legal bases for why they think the densities are noncompliant."

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The Board finds the Petitioners have participation standing. Thus the Board need not address the issue of APA standing.

The City's motion to dismiss as to standing is **denied**.

3. Do Petitioners allege violations of inapplicable GMA statues and Comprehensive Plan policies?

A. Consistency required for rezones and development regulations (portions of Issues 3 - 10)

The GMA gives the Board jurisdiction over petitions challenging amendments to development regulations, which include zoning.[15] RCW 36.70A.290(2) authorizes petitions to the Board "relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto" is in compliance with GMA goals and requirements.

In this case, Petitioners allege violations of the requirements of RCW 36.70A.130(1)(d) and RCW 36.70A.040(5) that development regulation amendments must be consistent with and implement the comprehensive plan and the requirements of RCW 36.70A.020 and RCW 36.70A.320(3) that GMA Planning Goals must guide development and adoption of development regulations.[16] The City asserts these provisions do not apply because the challenged Ordinance rezones or amends development standards and is thus not part of the Comprehensive Plan or Capital Improvement Plan (CIP),[17] but has not provided sufficient explanation as to why this rezone does not amend the Comprehensive Plan.[18]

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[15] RCW 36.70A.030(7) defines "development regulations:"

> (7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, … together with any amendment thereto . . . ." (emphasis added)

[16] Second Amended PFR at 1-2; Petitioners' Response to MTD at 8.

[17] Respondent's MTD at 8-9.

[18] Specifically, RCW 36.70A.070 (preamble) requires that all elements of a comprehensive plan must be internally consistent and consistent with the future land use map. No evidence has yet been presented as to the consistency between the future land use map and the zoning change enacted by the challenged ordinance.

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The City further asserts that SMC 23.34.007.C[19] addresses consistency with the Comprehensive Plan stating, "Compliance with the provisions of this chapter shall constitute consistency with the Comprehensive Plan for the purpose of reviewing proposed rezones." Petitioners respond, in essence, that the City cannot satisfy GMA consistency requirements by substituting its own requirements for those set forth in the GMA.[20]

The Petitioners are correct. However, the Board believes the City's argument may be narrower: that only those neighborhood policies incorporated into the Comprehensive Plan are applicable to rezones (in contrast to all neighborhood plan statements, for example).

Both parties need to clarify their assertions and provide supportive documentation when they submit their briefs.

The City's motion to dismiss issues pertaining to GMA consistency requirements is **denied.**

B. Policies pertaining to the acquisition or development of parks and open space (Issue 2)

The City argues that NR-P34[21] applies to the City's acquisition or development of parks and open space, not to rezones and amending general development standards. Petitioners offer no rebuttal and the Board agrees.

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[19] Exhibit 054: SMC Title 23 – Land Use Code. SMC 23.34.008.D reads:

> Neighborhood Plans.
> 1. For the purposes of this title, the effect of a neighborhood plan, adopted or amended by the City Council after January 1, 1995, shall be as expressly established by the City Council for each such neighborhood plan.
> 2. Council adopted neighborhood plans that apply to the area proposed for rezone shall be taken into consideration.
> 3. Where a neighborhood plan adopted or amended by the City Council after January 1, 1995[,] establishes policies expressly adopted for the purpose of guiding future rezones, but does not provide for rezones of particular sites or areas, rezones shall be in conformance with the rezone policies of such neighborhood plan.
> 4. If it is intended that rezones of particular sites or areas identified in a Council adopted neighborhood plan are to be required, then the rezones shall be approved simultaneously with the approval of the pertinent parts of the neighborhood plan.

[20] Petitioners' Response to MTD at 7-8.

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The Board finds that NR-P34 pertains to financial considerations that come into play only when the City is acquiring or developing parks and open spaces and so does not apply to the challenged Ordinance.

The City's motion to dismiss policy NR-P34 in Issue 2 is **granted**.

C. Policies for protecting critical areas and Cheasty Greenbelt (portions of Issue 3)

The City moves to dismiss Petitioners' allegations that the Ordinance violates policies protecting steep slopes and the Cheasty Greenbelt. The GMA requires cities to designate critical areas[22] and adopt development regulations to protect them.[23] The City asserts that its critical areas policies are implemented through SMC Chapter 25.09, the City's Environmentally Critical Areas (ECA) Code, arguing that under SMC 25.09.015, the ECA applies to all development and vegetation alteration on property containing an ECA or ECA buffer.[24] To protect steep slopes, City policy LU 212 is implemented through SMC 25.09.080, limiting disturbance, requiring complete stabilization of disturbed areas, and prohibiting clearing; LU 215 and LU 216 are implemented through SMC 25.09.180.B, prohibiting development on steep slopes, with certain exceptions if no adverse impact is demonstrated; and LU 216 is also addressed in SMC 25.09.320, prohibiting or regulating alteration of trees and vegetation. In other words, these policies are implemented at the project permit stage and do not apply to rezones and general development regulations.[25]

The City also argues that policies NR-P35,[26] LU 212,[27] LU 215,[28] and 216[29] (restricting development in the Cheasty Greenbelt) do not apply to this Ordinance because

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[21] NR-P34 Consider using levy funds, general funds and partnerships with developers, to create a hierarchy of public and private open spaces that are publicly accessible and address the gaps identified in the Parks Gap Analysis.
[22] RCW 36.70A.170.
[23] RCW 36.70A.060(2).
[24] Respondent's MTD at 7-8.
[25] *Id.*
[26] NR-P35 Seek to preserve environmentally sensitive hillsides, particularly those in the Cheasty Greenbelt, and seek to protect them from further residential development.
[27] LU 212 Seek to protect landslide-prone hillsides, including steep slopes, against future damage due to instability created or exacerbated by development, including protecting against damage to public facilities.

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the rezone does not affect the Greenbelt.[30] The City submits the declaration of Laurie Menzel and a map of the North Rainier Mount Baker Rezone that is Exhibit A to the challenged Ordinance.[31] The map shows no portion of the Greenbelt is being zoned for further residential development in violation of NR-P35.

Petitioners offer no rebuttal.

The Board finds that the Ordinance does not apply to the Cheasty Greenbelt because no part of the Greenbelt is rezoned. Further, a challenge implying that the critical areas protections for steep slopes are inadequate, or will not be appropriately applied as a result of enactment of the Ordinance, is unfounded. Portions of Issue 3 alleging violations of policies NR-P35, LU 212, 215, and 216 are inapplicable.

The City's motion to dismiss inapplicable polices as to Issue 3 is **granted**.

D. RCW 36.70A.070(3), requiring a capital facilities plan, and (8), requiring a park and recreation plan do not apply (Issues 4 and 8)

Citing RCW 36.70A.070(9),[32] the City asserts that mandatory element requirements relating to parks are not in effect because the state has not appropriated funding for that purpose. Petitioners offer no rebuttal.

The effect of the state's failure to appropriate funding for this purpose has been the subject of prior litigation. In *Dry Creek and Futurewise v. Clallam*,[33] the County argued

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Take into account the relative risk to life or property when reviewing development proposals for landslide-prone areas

[28] LU 215 Regulate development on steep slopes to control erosion, water runoff, siltation of streams, lakes, Puget Sound and the City's stormwater facilities.

[29] LU 216 Limit disturbance of the slope and maintain and enhance existing vegetative cover in order to control erosion, water runoff, and siltation of streams, lakes, Puget Sound, and the City's stormwater facilities.

[30] Respondent's MTD at 8.

[31] Declaration of Laurie Menzel, Exhibits 51 and 60.

[32] RCW 36.70A.070(9) reads:

> It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130.

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before the Court of Appeals that a lack of state funding negates the effectiveness of language added in 2002 to the capital facilities plan element subsection of 36.70A.070 such that the Growth Board did not have jurisdiction to hear a *failure to review* challenge under *Thurston County*.[34] The Court held that state distribution of sufficient funds to cover applicable local government costs at least two years prior to a comprehensive plan update required by RCW 36.70A.130[35] was a **condition precedent** to the enforceability of the RCW 36.70A.070(3) requirement (enacted January 1, 2002) that the County consider and implement a parks and recreation facilities component to the capital facilities element. The Court remanded to the GMHB for fact-finding as to whether the state had provided such funding.[36]

Subsequent to the Court of Appeals decision in *Dry Creek and Futurewise v. Clallam*, the 2011 Legislature clarified its intent to provide local governments with additional time to comply with mandatory element requirements added after 2002 in recognition of budget constraints, but not to remove any previously existing statutory requirement,[37] and it simultaneously extended the City of Seattle's deadline for review of comprehensive plans

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[33] *Dry Creek and Futurewise v. Clallam*, 161 Wn. App. 366; 255 P.3d 709; 2011 Wash. App. LEXIS 921 (September 3, 2010) reconsideration denied May 13, 2011.
[34] *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 344, 190 P.3d 38 (2008).
[35] RCW 36.70A.130(9): It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed at least two years before local government must update comprehensive plans as required by RCW 36.70A.130.
[36] *Dry Creek,* 161 Wn. App. 366, at 386.
[37] Session Laws of Washington, 2011, Chapter 353, Sec. 1**.**

> It is the legislature's intent to provide local governments with more time to meet certain statutory requirements. Many cities and counties in Washington are facing revenue shortfalls, higher expenses, and more difficulty with borrowing money as a result of the economic downturn. The effects of the economic downturn on the budgets of local governments will be felt most deeply from 2010 to 2012. Local governments are facing the combined impact of decreased tax revenues, a falloff in state and federal aid, and increased demand for social services. With the loss of tax revenue and state and federal aid, local governments are being forced to make significant cuts that will
> eliminate jobs, curtail essential services, and increase the number of people in need. Additionally, local governments are struggling to comply with certain statutory requirements. Local governments want to comply with these statutory requirements, but with budget constraints, they need more time to do so. The legislature does not intend to remove any existing statutory requirement, but rather modify the time.

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and development regulations as required by RCW 36.70A.130(4) to June 30, 2015, and every eight years thereafter.[38] Nothing in the intent language or statute indicates that the City's comprehensive plan as it relates to capital facilities or parks and recreation is exempted from the consistency requirements of RCW 36.70A.070 (preamble).

The present case is distinguished from *Dry Creek and Futurewise v. Clallam* because the exemption language in RCW 36.70A.070(9) applies to the requirement that the City adopt[39] a parks and recreational component to the capital facilities element and a parks and recreational element pursuant to RCW 36.70A.130. Unlike *Dry Creek and Futurewise v. Clallam*, Petitioners do not bring a *failure to revise* challenge based on a scheduled comprehensive plan review and the Petition for Review does not allege violations of RCW 36.70A.030(3) and (8) mandates to add elements to the City's comprehensive plan. Rather, Petitioners allege that the challenged ordinance violates the consistency requirements of RCW 36.70A.070,[40] from which RCW 36.70A.070(9) provides no exemption. The alleged inconsistency derives from the City's decision to upzone and amend development regulations in a Neighborhood Plan area. Funds to insure consistency is maintained in light of this kind of action do not logically come from the state, but rather from projected revenue (development fees, etc.) or other local funding. Neither is it logically possible that the state could predict such a local decision in order to fund necessary revisions to the CIP two years in advance.

The Board finds the City is not exempt from the consistency requirements of RCW 36.70A.070 when enacting an area-wide rezone.

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[38] Laws of Washington, 2011, Chapter 353, Section 2 (reenacting and amending RCW 36.70A.130(5)(b) to read "On or before June 30, 2015, and every eight years thereafter, for King, Pierce, and Snohomish counties and the cities within those counties").

[39] Enact and review.

[40] The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The **plan shall be an internally consistent document and all elements shall be consistent with the future land use map.** (**emphasis added)**

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The City's motion to dismiss issues relating to the Capital Improvement Plan is **denied**.[41]

MOTION TO SUPPLEMENT

WAC 242-03-565 permits the filing of motions to allow for evidence that supplements what is in the Index, providing:

> Generally, the board will review only documents and exhibits taken from the record developed by the city, county, or state in taking the action that is the subject of review by the board and attached to the briefs of a party. A party by motion may request that the board allow the record to be supplemented with additional evidence.
>
> (1) A motion to supplement the record shall be filed by the deadline established in the prehearing order, shall attach a copy of the document, and *shall state the reasons why such evidence would be necessary or of substantial assistance to the board* in reaching its decision, as specified in RCW 36.70A.290(4). The board may allow a later motion for supplementation on rebuttal or for other good cause shown. (emphasis added)

The burden is on the moving party to demonstrate the evidence they wish to add is necessary or of substantial assistance to the Board. To satisfy this burden, the moving party should explain what is in the evidence that makes it relevant, how it is not available elsewhere in the record, and why consideration of the additional evidence would be necessary or particularly helpful to the Board.

Pursuant to WAC 242-03-510(3), "documents submitted to the jurisdiction or a part of the jurisdiction's proceedings prior to the challenged action . . . are presumed admissible subject to relevance."

Petitioners move to supplement the record as follows:

[41] The parties in their briefs on the merits should explain and document how the Parks Plan and Parks CIP relate to the Comprehensive Plan and Capital Facilities Element.

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Proposed Exhibits 62[42] and 63[43]

It is undisputed that these documents were produced by the Department of Planning and Development in response to Petitioners' public disclosure request for "documents used and developed by the City in enacting the rezone ordinance."[44] The City objects that these are "internal staff documents" and, as such, are irrelevant to a determination of compliance. The City in general seeks to restrict its record to items supporting the Ordinance presented to the Council for its consideration.[45] While the Board sympathizes with the City's desire to limit its Index for an ordinance that culminates a multi-year process, the Board's mandate is to determine GMA compliance "in view of the entire record before the Board." RCW 36.70A.320(3). In *Clark County v. WWGMHB*, 161 Wn. App. 204, 235-36, 254 P.3d 862 (2010), vacated in separate part, 177 Wn.2d 136 (2013), the Court rejected "the County's argument that the Growth Board is compelled to consider only the portion of the evidentiary record highlighted by the County," and not the prior or contextual record.

To the extent that the City's department declared these records were used and developed by the City in enacting the rezone ordinance, the Board determines they should be part of the record. However, the burden remains on Petitioners to show how the enacted ordinance violated the GMA.

Petitioners' motion to supplement the record with Exhibits 62 and 63 is **granted.**

Proposed Exhibit 64

This is a 2010 Seattle Planning Commission report, "Seattle Transit Communities: Integrating Neighborhoods with Transit." Petitioners contend that it was, or should have been, considered by the City in preparing for the rezone of the Mount Baker Town Center.[46]

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[42] SM (Seattle Mixed) additional height language for Lowes (undated).
[43] A briefing document entitled "Mayor McGinn's Senior Team Meetings – North Rainier Zoning Changes" (February 20, 2013).
[44] Petitioners' MTS at 3, 4.
[45] City's Response to Petitioners' MTS at 3.
[46] Petitioners' MTS at 4.

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The City objects that this is a "background document"[47] and objects that the planning documents are not "policies" in the comprehensive plan and are, therefore, irrelevant.[48]

Although the Board agrees with the City that it looks to the Comprehensive Plan to see which policies have been adopted, it is certainly appropriate for the Board to review prior staff or planning commission reports used by the jurisdiction as it developed and adopted an ordinance. The Board determines that a Planning Commission report on the subject of integrating transit into neighborhoods may be helpful where the challenged Ordinance pertains to planning a neighborhood around a transit hub.

Petitioners' motion to supplement the record with Exhibit 64 is **granted.**

Proposed Exhibit 65

Petitioners seek to admit a document entitled "Agenda-North Rainier Neighborhood Planning Urban Design Framework Work Session" (DPD July 14, 2010) which they assert was developed and used by the City in connection with the rezone.[49] The City's Response states that it was prepared in 2001 as part of Strategic Light Rail Area Station Planning[50] and renews its objection as to relevance.

The document is clearly labeled "November 2010." (The Board wonders if the City's reference was intended to relate to Exhibit 66.[51]) As previously discussed, the Board determines that such a document is part of the City's record. It is Petitioners' burden on the merits to demonstrate what weight it should be given.

Petitioners' motion to supplement the record with Proposed Exhibit 65 is **granted**.

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[47] City's Response to Petitioners' MTS at 3.
[48] *Id.* at 2, 5.
[49] Petitioners' MTS at 5.
[50] City's Response to Petitioners' MTS at 2.
[51] *Id.*

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Proposed Exhibits 66 – 68[52]

Petitioners explain that the preliminary efforts to define and implement zoning for the area now referred to as the Mount Baker Town Center were first organized under the label "the McClellan Station Area" and seek to admit three such planning documents from 2000 and 2001. While Petitioners claim these documents will be necessary and of substantial assistance to the Board, they neglect to explain how or why.[53]

The Board finds that documents pertaining to planning efforts thirteen years previous are likely to have been superseded by more recent materials.

Petitioners' motion to supplement the record with Proposed Exhibits 66 – 68 is **denied.**

Proposed Exhibit 69[54]

Petitioners seek to admit this document as illustrative of "appropriate community amenities," including open space and coordination with the Seattle School District, identified in the planning process. It appears to be a record of proposals under discussion fifteen years ago, some adopted and some not. The City objects that this document is not relevant. The Board agrees that it is not likely to be necessary or of substantial assistance to the Board's decision.

Petitioners' motion to supplement the record with Proposed Exhibit 69 is **denied**.

Proposed Exhibits 70 and 71

Petitioners seek to admit two reports by the Olmsted Brothers, adopted by the City in 1903 and 1909, as necessary to the Board to understand the "sacred framework" for the

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[52] Exhibit 66: "Envisioning McClellan: Link Light Rail in Seattle's Neighborhoods (August 2000)"; Exhibit 67 "McClellan Town Center: Development Strategy (August 2001)"; Proposed Exhibit 68: "McClellan 10-329 – 10-349"

[53] Petitioners' MTS at 5-6.

[54] The "North Rainier Neighborhood Approval and Adoption Matrix" (1999) was prepared by the North Rainier Steering Committee in coordination with the Interdepartmental Review and Response Team" and "Strategic Planning Office" – Petitioners' MTS at 6-7; City's Response to MTS at 2.

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City's open space planning.[55] Petitioners argue that the Olmsted principles have been adopted by the City and incorporated into its Comprehensive Plan provisions.[56]

The Board doesn't doubt that the Olmsted Brothers made significant and lasting contributions to the City's parks planning, but their recommendations do not constitute GMA requirements, except as the City has chosen to incorporate and retain them in its Comprehensive Plan. Thus the reports themselves are not necessary to the Board's decision.

Petitioners' motion to supplement the record with Proposed Exhibits 70 and 71 is **denied**.

Proposed Exhibit 72

Petitioners seek to admit the Report on Designation of Cheasty Boulevard South (2003) prepared by the Landmarks Preservation Board to show the importance of the Cheasty Boulevard and Greenspace as an historic landmark. Pursuant to WAC 242-03-630(3),[57] the Board takes official notice of the Cheasty Designation. Although the designation may pertain to issues in the case, Petitioners have not shown that the designation report contains any additional information necessary to the Board's resolution of the case.

Petitioners' motion to supplement the record with Proposed Exhibit 72 is **denied**.

The Board takes **official notice** of the designation of Cheasty Boulevard South as a historic landmark.

Proposed Exhibit 73

Petitioners advance the "North Rainier Goals & Policies: Updating the Neighborhood Planning Element of the Comprehensive Plan" (2010) as background and legislative context

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[55] Petitioners' MTS at 8.
[56] *Id.*
[57] WAC 242-03-630(4) reads, in relevant part, "Ordinances, resolutions, and motions enacted by cities, counties, or other municipal subdivisions of the state of Washington, including adopted plans, adopted regulations, and administrative decisions . . . ."

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that will assist the Board in understanding the disputed Comprehensive Plan elements. The Board will give Petitioners the benefit of the doubt and admit this document.

Petitioners' motion to supplement the record with Proposed Exhibit 73 is **granted**.

Proposed Exhibit 74

Petitioners seek to admit the "Parks and Recreation – Adopted 2014-2019 Capital Improvement Plan" as evidence that the City has not allocated any resources to "bridge the recognized open space gaps."[58] The City contends that the Board has no jurisdiction to review the CIP because it is not the challenged action.

The Board agrees the CIP is not the challenged action, but determines the document is an adopted plan of the City of which it may take official notice pursuant to WAC 242-03-630(3). The Board takes **official notice** of the Parks and Recreation section of the 2014 – 2019 Capital Improvement Plan.

ORDER

As decided above, THE BOARD ORDERS:

The following revised case schedule shall remain in effect unless modified in writing by subsequent order:

September 2, 2014	Petition Filed
September 12, 2014	Notice of Hearing and Preliminary Schedule
October 2, 2014	• Index Due (Respondent to file) • Petitioners' Revised Issue Statements Due
October 6, 2014	Prehearing Conference
October 14, 2014	Prehearing Order
October 15, 2014	City's documents due to Petitioner
November 17, 2014	Deadline for Dispositive Motions and for Motions to Supplement the Record (proposed supplements to be attached)

[58] Petitioners' MTS at 10.

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November 19, 2014	Deadline for Response to Dispositive Motions or Motions to Supplement the Record
November 26, 2014	Deadline for Reply to Motions (optional)
December 10, 2014	Anticipated date of Order on Motions
December 29, 2014	Deadline for Petitioners' Prehearing Brief (with exhibits)
January 14, 2015	Deadline for Respondent's Prehearing Brief (with exhibits)
January 23, 2015	Deadline for Petitioners' Reply Brief (optional)
January 30, 2015 10:00 a.m.	**Hearing on Merits of Petition** Seattle City Hall, Room 370 600 4th Avenue, Seattle, WA 98104
April 1, 2015	**Final Decision and Order Deadline**

Issue 2 is dismissed.

Issue 3 shall read "Is the Ordinance inconsistent with LU-48 and LU-73 of the City's Comprehensive Plan because the City failed to balance housing needs with the surrounding neighborhood character; failed to properly identify, preserve and enhance important open spaces, green spaces and views in or near the Town Center rezone area?"

The Supplementation Table below indicates the ruling of the Board with respect to each of the documents requested for supplementation of the record.

Supplementation Table

62	SM (Seattle Mixed) additional height language for Lowes (Department of Planning and Development Public Disclosure	Granted
63	Mayor's Senior Team Meetings Briefing Form (Feb. 20, 2013)	Granted
64	Seattle Planning Commission Report: Seattle Transit Communities Integrating Neighborhoods with Transit (Nov. 2010)	Granted
65	North Rainier Neighborhood Planning Urban Design Framework Work Session (July 14, 2010)	Granted
66	Envisioning McClellan: Link Light Rail in Seattle's neighborhoods (August 2000)	Denied
67	McClellan Town Center: Development Strategy (August 2001)	Denied
68	McClellan 10-329 – 10-349	Denied
69	N. Rainier Neighborhood Approval and Adoption Matrix (Sept. 1999)	Denied
70	First Annual Report of the Board of Park Commissioners 1884-1904 (1905)	Denied

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71	Parks, Playgrounds and Boulevards of Seattle, Washington (1909)	Denied
72	Landmarks Preservation Board Report on Designation of Cheasty Boulevard South (January 22, 2003)	Official Notice
73	North Rainier Goals & Policies: Updating the Neighborhood Planning Element of the Comprehensive Plan (January 2010)	Granted
74	Department of Parks and Recreation 2014-2019 Adopted Capital Improvement Program	Official Notice

SO ORDERED this 10th day of December, 2014.

_____
Cheryl Pflug, Board Member

_____
Margaret Pageler, Board Member

_____
Nina Carter, Board Member

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